

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE:)	
)	Case No. 01-MDL-00875
ASBESTOS PRODUCTS)	
LIABILITY LITIGATION)	Philadelphia, PA
)	January 17, 2013
)	10:49 a.m.

TRANSCRIPT OF TELEPHONIC HEARING
BEFORE THE HONORABLE DAVID R. STRAWBRIDGE
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiffs:	ROBERT G. MCCOY, ESQUIRE ALLEN VAUGHAN, ESQUIRE KEVIN HANBURY, ESQUIRE MICHAEL P. CASCINO, ESQUIRE CASCINO VAUGHAN LAW OFFICES, LTD. 220 South Ashland Avenue Chicago, Illinois 60607
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1 (The following was heard telephonically at 10:49 a.m.)

2 THE COURT: All right. Counsel, good morning. It's
3 Judge Strawbridge.

4 COUNSEL: Good morning, Your Honor.

5 THE COURT: May I take roll? We have Bob McCoy,
6 Allen Vaughan, Mike Cascino on for plaintiff, is that right?

7 MR. MCCOY: Yes.

8 THE COURT: And Richard Lauth and Mike Evert for the
9 defendant?

10 MR. LAUTH: Yes, Your Honor.

11 THE COURT: Okay. Thank you. I wanted to have --
12 to have this hearing because it is -- there are, in my
13 judgment, a number of holes and gaps in the presentation of
14 the information with respect to this settlement, or not
15 settlement, and I wanted to see whether or not I could fill
16 the gaps.

17 So I'm going to ask counsel that need to be
18 considered that they are responding to my questions pursuant
19 to their obligations as counsel, to obviously answer
20 truthfully, to the best of their recollection, as to the way
21 in which these circumstances came about, and what happened,
22 principally from 2002 onward.

23 It appears to me, and I'm going to ask Mr. Cascino,
24 or Mr. Vaughan, or Mr. McCoy from the plaintiff's side, it
25 appears to me from the documentation that was submitted by the

1 defendants going back to 2002, the email communications from
2 Mr. Vaughan to Mr. Evert in September of 2002, and then
3 apparently a further reference in December of 2002 from Mr.
4 Vaughan to Mr. Evert confirming settlements in the Morris
5 case, that that would -- I haven't heard the plaintiffs
6 contest that that would have done anything other than
7 constitute a written confirmation of a valid settlement.

8 Is that -- am I right about that, Mr. Vaughan and
9 Mr. Cascino, particularly with respect to where this thing
10 would have stood say at the end of 2002?

11 MR. McCOY: Judge, this is Bob McCoy. I'm going to
12 respond first, because I just want to draw the parameters here
13 from our side. I'm going to be handling the legal issues.
14 Mike and Allen will be handling questions that Your Honor has
15 on the fact issues.

16 And if they overlap into what I consider the legal
17 issues, I'll interject at that point in time. So that's how
18 we perceive this. We also have made and raised a concern,
19 Judge, about the handling of this motion, since we've -- it's
20 a motion that would effectively be a summary judgment for a
21 final disposition on the case.

22 And that's -- we raise this question under this 28
23 U.S.C Section 636. And I didn't -- I didn't myself quite
24 understand properly what the jurisdictional basis was here for
25 this motion being considered by Your Honor rather than Judge

1 Robreno.

2 And I say that because I think jurisdiction's
3 something important to have that made clear on the record
4 before we proceed with this type of situation.

5 THE COURT: Okay. Well I will -- I'm sorry, is
6 there something more you wanted to add on that point?

7 MR. MCCOY: I missed what you said, Judge.

8 THE COURT: I was -- I thought that you were still
9 trying to speak again. I wondered if there was anything more
10 you wanted to say on that point?

11 MR. MCCOY: No. Just that I don't understand what
12 the jurisdictional grounds are for Your Honor to rule on this
13 motion.

14 THE COURT: Okay.

15 MR. MCCOY: That's my --

16 THE COURT: All right. Well it is my judgment that
17 it fits within the general purview of case management that has
18 been referred to me by Judge Robreno. However, that does not
19 in any way, Mr. McCoy, preclude you from making a -- your own
20 -- articulating your own position to Judge Robreno.

21 What matters I think is whether or not, whatever
22 determination I make, how that determination would be
23 considered. Would it be considered simply as a matter for
24 Judge Robreno to have to reconsider it again de novo, and you
25 could make that argument to him, or would it be considered as

1 something that he would be -- you know, feel that he would be
2 obligated to respond to, unless it was determined that it was
3 clearly erroneous determinations.

4 And you're certainly free to make that argument to
5 Judge Robreno. What I wanted to do is to try to move this
6 forward as an initial matter. I would also point out to you
7 that it is my recollection that -- and I don't think it's
8 technically a matter of jurisdiction, but it is my
9 recollection that I previously had been asked by the parties,
10 I'm not going to recall specifically who initiated it, but
11 there was never any difficulty expressed by any party with
12 respect to a motion to enforce settlement that concerned
13 something that your firm was involved in with Owens Illinois,
14 some time ago, a year or more ago, which we did -- which we
15 did rule upon.

16 And there was never any objection made to any of
17 those rulings, or the basis upon which I have the authority to
18 make those rulings. So I hear you, I respect your right to
19 make such an objection to that basis, but I'm not going to
20 defer from considering the question here now, and providing at
21 least a report and recommendation, or my own determination to
22 Judge Robreno, if we have to do that.

23 Let me also say that what I had as I've looked at
24 the papers, some additional papers that came in this morning,
25 and I would -- I'm going to submit this to you gentlemen to

1 consider, as to whether or not I would defer from making any
2 ruling whatsoever, leave that determination entirely to Judge
3 Robreno -- with Judge Robreno with his permission, and order
4 you all in here to look at this question from the perspective
5 of settlement.

6 As I started out today, and this is the direction I
7 really want to take, is that it was my understanding, and I'm
8 still waiting for a confirmation of that from -- on behalf of
9 CVLO, which I'm happy to accept from you, Mr. McCoy or from
10 Mr. Vaughan, or Mr. Cascino, that this matter was deemed and
11 perceived to be settled as of the end of 2002.

12 So at some point it appears, and if I'm wrong about
13 that I suspect you'll correct me, it some point it appears
14 that agreement was reached between the parties with respect to
15 the appropriate settlement sum to be provided by -- by the
16 Viacom entity as of that date.

17 And I, you know, I'm at a complete loss to
18 understand what happened for eight or nine years subsequent to
19 2002, but it obviously appears to be the case that the
20 settlement was ever fully consummated by virtue of a release
21 having been provided, or funds having been paid.

22 So having said all that, can I go back to my earlier
23 question, and as you would have seen I have -- I'm
24 operating --

25 MR. McCOY: Judge, I still have a couple of items

1 here, before we fully get down to that question that Your
2 Honor posed. As I then -- I'm not clear from what you just
3 said, this is something that's within the scope under this 28
4 U.S.C Section 636 as something that you have been designated
5 to hear as a result of the general order that was issued
6 assigning the cases, or of Cascino Vaughan law offices, or if
7 it's something that's like a specific hearing that you're
8 conducting to assess the evidence, which is a separate section
9 of the Statute.

10 I wasn't clear which -- which one we're under.

11 THE COURT: Well there's not been -- there has not
12 been a specific order of reference as to this specific motion.
13 The issue was raised, was brought by -- by CBS, and generally,
14 as you well know, I've been dealing with virtually all of the
15 motions -- case management related motions.

16 And I saw this, particularly given what we had done
17 on Owens Illinois, as fitting within that category. And I am
18 going to proceed on that basis. So if you want to bring this
19 up with Judge Robreno, you can bring it up with Judge Robreno
20 afterwards, but you're not going to get me to not take any
21 action with respect to this, if that's what your purpose or
22 intent is.

23 MR. MCCOY: What I'm -- I just want to make sure the
24 jurisdictional points are dealt with here. I mean, what the
25 Statute says, and what would be appropriate would be a

1 specific designation by -- to you as Magistrate Judge to
2 conduct these hearings.

3 When we go back to that Owens Illinois situation
4 that Your Honor was referencing, that's what we had. And that
5 was by agreement of the parties, and then there was an order
6 entered that that would be undertaken by the Magistrate Judge
7 at the time being if a mediator really, Judge Reed.

8 So that's how that came about, and that was passed
9 on to Your Honor when you took over.

10 THE COURT: Mr. McCoy, first of all, that's not
11 consistent with my recollection. And I certainly don't have
12 all those particular documents in front of me.

13 My recollection is that was after -- after Judge
14 Reed's time. But I've stated what I've stated on this, and I
15 want to move on. So you can take up your concerns that you
16 have with Judge Robreno.

17 And to the extent that I get to the point where I
18 have to write something on this, I will lay out with
19 particularity the basis upon which I believe I have the right
20 to -- the right to proceed with respect to this, and you can
21 accept it or not accept it, and take it to Judge Robreno.

22 So can I have an answer to my question, please?

23 MR. MCCOY: The question -- the question is one that
24 -- you're talking now about the correspondence from
25 Westinghouse, and then from Mr. Vaughan?

1 THE COURT: That's right.

2 MR. McCOY: So I'll let Mr. Vaughan go ahead and
3 give the understanding that he had in representing Cascino
4 Vaughan Law Office when he wrote that letter back.

5 MR. VAUGHAN: Good morning, Your Honor. Allen
6 Vaughan here. Regarding asbestos settlements and Westinghouse
7 and CVLO here in particular, the custom and practice has
8 always been that once an agreement or a number had been
9 established that the defendant would provide a release within
10 30 days, and generally paid within 30 to 60 days of a signed
11 release.

12 And we have to say that it's my experience handling
13 the majority of these situations in our office that 95, 98
14 percent of the deals are done within the 60 to 90 days, with
15 the notable exception discussed, OI.

16 Here, the defendants did not pay. We have no record
17 of defendants providing a proposed dismissal order. We have
18 records we keep, as you recall, we had over 10,000 B reads.
19 But -- that we were able to find in our basement. But we also
20 note that there was no scanning of computer records until
21 approximately over -- around or about 2005.

22 We have no documentation that we got a release. I
23 have no recollection of ever getting a release. I have no
24 record of an attempt to trying to get a signature. What we
25 have is a cold trail.

1 And what we also have is CVLO continuing to work up
2 the case. We sent several pieces of material by email last
3 evening showing our continued understanding that this case had
4 not been settled, since it had not been paid.

5 And we even have in the Court record on the MDL-875
6 docket order of 10/12/10 the case listed as still being open
7 as regard to Westinghouse.

8 So what we find is a cold trail with regard to the
9 Michael Morris case.

10 THE COURT: All right. So understanding that you
11 have no indictment -- let me just back up for a second. What
12 you've referred to as -- I'm not sure if you used the exact
13 phrase, but custom and practice with respect to usually
14 getting releases within 30 days and then payment within 30 to
15 60 days.

16 Was that a procedure that was also a custom and
17 practice in negotiations that you had with Westinghouse?

18 MR. VAUGHAN: Well here in the letter it's
19 documented that we would get -- they would make their best
20 efforts to pay in 2002. The letter is dated September 20th of
21 2002.

22 THE COURT: Okay. But my question was whether or not
23 that custom and practice that you referred to was a custom and
24 practice that you found in your dealings with Westinghouse and
25 with Mr. -- I guess it was Mr. Evert at the time?

1 MR. VAUGHAN: I must say that it's a limited
2 relationship, but that is true, yes.

3 THE COURT: Okay. And is there anything in your
4 materials that indicate at the end of 2002, in 2003, or 2004,
5 or 2005 that anybody from CVLO made any effort to contact
6 Westinghouse in order to, you know, determine where the
7 release was, why the release isn't coming, and, you know, to
8 get the settlement finalized such that payments could be made
9 to your client pursuant to whatever agreements had been taken
10 place?

11 MR. VAUGHAN: I could find no such record.

12 THE COURT: Okay. Either way, nothing either --
13 nothing whatsoever, is that what you're saying?

14 MR. VAUGHAN: No. And we were also not able to find
15 a record that the defense provided a proposed dismissal order
16 or any payment.

17 THE COURT: Right. Okay. I have that. So what I
18 had, and I didn't sort thorough everything that was submitted
19 to us which came in, I guess overnight or early this morning,
20 some 50 or so pages apparently from your office, from what
21 Joel tells me.

22 But what I thought I saw in there was some
23 communication that picked up again as of about September of
24 2010. And my question is whether or not September of 2010 is
25 the first time after December 2002 that there was any activity

1 at all with respect to this case between your firm and the
2 Evert firm, or any other firm representing Viacom or
3 Westinghouse?

4 MR. VAUGHAN: Our record shows in September 2007 the
5 AO12, which the non-bankrupt, unsettled defendant as CBS in
6 this case. Michael Morris.

7 THE COURT: All right. Good.

8 MR. MCCOY: Meaning that that date when we submitted
9 an AO12 filing that had that listed.

10 THE COURT: All right. And that AO12 filing copy --
11 would have been copied to Westinghouse, right?

12 MR. VAUGHAN: Yes, Your Honor.

13 MR. MCCOY: And it would have been served in the
14 normal procedures of AO12, yes.

15 THE COURT: Yeah --

16 MR. CASCINO: This is Mike Cascino. Mike Evert
17 would probably remember those boxes he got, I think he and I
18 had a conversation kind of joking about his office having all
19 these documents delivered.

20 THE COURT: Okay. So let me go back, if I could ask
21 Mr. Evert if you'd be good enough to respond, Mr. Evert, was
22 it -- do you have -- and I fully appreciate maybe some
23 difficulties of specific recollection to events so long ago.
24 But is it your understanding, and I'm going to take it that it
25 was Mr. Vaughan's understanding, that at least as of the end

1 of December that there had been an agreement reached between
2 Viacom and Mr. Morris, through his lawyers, that that case was
3 to be settled under very, very broad terms as set out in the
4 communications from Mr. Vaughan.

5 And would that have been the understanding that
6 Viacom would have had through you, Mr. Evert?

7 MR. EVERT: Yes, sir.

8 THE COURT: Okay. So do you have any indication of
9 -- it's also been explained to me by Mr. Vaughan that the
10 general practice was that he would have understood from other
11 defendants, and some limited experience I guess with your
12 office, that a release would have been sent by your office
13 normally within about 30 days, release would be signed.

14 And once the signed release went back there'd be
15 payment within something like 30 to 60 days. Broadly
16 speaking, is that an accurate representation of the way these
17 things normally worked?

18 MR. EVERT: Yeah. I think, Your Honor, I guess my
19 broad answer would be yes. I mean, the only quibble I would
20 have is that obviously we've resolved a number of cases over
21 the years with Cascino Vaughan, and we typically use the same
22 release.

23 So whether or not there was an expectation in my
24 mind that we were to send them a specific release for the
25 Morris case, or whether or not the understanding was that we

1 would just use the same release, I can't recall.

2 I do, you know, my only -- I do recall being in
3 Philly, and I do recall Bruce Lassman being there, and I do
4 recall Allen and I sitting in a room, but beyond that, I don't
5 recall very much.

6 But, yes. Certainly the expectation would be and
7 the agreement would be that the release would be of a form
8 that was acceptable to both parties. Whether or not we would
9 just use a release from a previous case, or we would send them
10 a specific one for this case, I don't know.

11 I just don't recall.

12 THE COURT: All right. Is there any indication of
13 any activity, can you tell me, from your files, or from
14 Viacom's files, as to any question having been raised as to,
15 you know, where is the release, let's get the settlement
16 finalized? You know, anything of that sort, up until the next
17 indication of any activity on this, which appears now to be
18 the submission of the A012's by the CVLO in 2007?

19 MR. EVERT: Yeah, the only comments that I would
20 have between 2002 and 2010, Your Honor, would be, I am sure
21 that at some point we would have either been served or had
22 access to the A012. Mr. Cascino is right, he and I did have
23 a conversation about a bunch of records he sent to us.

24 But I don't think -- if they served the A012 on May
25 31, if we didn't get a copy, we certainly have gotten one.

1 So, you know, I don't think that's much of -- I'm sorry, they
2 served it on I think in September of '07, May 31 was when
3 Judge Robreno issued the order.

4 Then the only other activity that we've got relevant
5 to this matter is, the Court may know that we settled six
6 cases on that particular day, Mr. Vaughan and I did. And
7 according to our records, the last one that was paid was --
8 the release was submitted in July of 2008, which because of in
9 these matters with estate -- estates and representatives
10 getting appointed and stuff like that, it's not unusual from
11 our perspective for several years to pass before a settlement
12 is consummated.

13 THE COURT: Okay. The six cases you're referring
14 to, are you referring to the cases identified in Mr. Vaughan's
15 letters of September the 20th?

16 MR. EVERT: Yeah. The two letters of September the
17 20th.

18 THE COURT: Right. Each of which identify three
19 cases, Morris being one of them?

20 MR. EVERT: That's correct. And the last case
21 submitted for payment was actually the Neu case, which is on
22 the other -- N-E-U --

23 THE COURT: Yes.

24 MR. EVERT: -- which is the other letter, and it was
25 submitted in July of 2008 and CBS paid it in August of 2008.

1 THE COURT: Do you have any indication with
2 specifics, or generally, about the timing of the payments in
3 the other five, or maybe other four, since apparently there
4 was no payments ever made in Morris?

5 MR. EVERT: I'm sure I do, Your Honor, but I don't
6 have it in front of me. I just asked my office for the last
7 one that was paid.

8 THE COURT: Yes.

9 MR. EVERT: So it would have occurred prior to that.

10 THE COURT: Okay. Now my understanding is that when
11 you all were before Judge Reed, that -- and the -- and the
12 first interrogatories were to be propounded, that there were
13 interrogatories propounded, and were there -- was there
14 discovery ongoing during Judge Reed's time with respect to the
15 Morris case? Mr. Evert, can you answer that?

16 MR. LAUTH: This is Richard Lauth, Your Honor. I
17 can answer that. I think from anecdotal evidence, there was
18 discovery going on in the Morris case. They were submitting
19 interrogatory responses and other discovery in that case, just
20 like they were the rest of their cases.

21 Westinghouse did not propound any specific discovery
22 to plaintiff in the case, though. We were not actively
23 litigating it, because we considered it settled.

24 THE COURT: Okay. Well when you say you considered
25 it settled but what -- what did you do, even as of that time,

1 about -- or any prior to that time to get back to the
2 plaintiffs to try to find out what happened to the release or
3 why no release was being submitted to you?

4 MR. LAUTH: That was one of the -- that was the item
5 I sent to you yesterday afternoon that we submitted around
6 4:00 yesterday, Your Honor. Joel will certainly recall this,
7 I'm not sure whether or not you will, because it predated you
8 to the Cascino Vaughan litigation.

9 But right toward the end of Judge Reed's tenure, he
10 had asked the parties to endeavor to reconcile their case
11 list, because there were so many discrepancies that were
12 considered open by one party or another.

13 Bob Knox of the Cascino Vaughan firm sent some
14 correspondence to us in September of 2010 enclosing their case
15 list which they considered open. Morris did appear on that
16 case list. And in April of 2011, I sent a letter to the
17 Cascino Vaughan law firm specifically identifying Morris,
18 among a number of other cases that we considered as settled,
19 or otherwise requiring dismissal.

20 I flagged that to them, that was on the forty
21 something -- it was on page 37 of the PDF that I sent
22 yesterday afternoon to the Court. And in that letter, I said
23 with regard to those cases that we previously considered
24 settled or otherwise requiring dismissal, I requested that if
25 CVLO had any disputes on that issue that they contact me

1 immediately to provide an explanation. And on that point, I
2 never heard anything else.

3 That was the first attempt to reconcile this issue
4 with Cascino Vaughan. A little over a year later in June of
5 2012, and I believe, I'm trying to remember what prompted me
6 to send the email, but I believe it may have been depositions
7 being noticed that may have impacted the cases.

8 I sent an email to Kristen Stambaugh, who was with
9 Cascino Vaughan at the time, requesting a dismissal in Morris
10 and providing her the settlement documentation that's part of
11 this motion to enforce, and requesting that a dismissal be
12 filed in Morris, in another case called Binder.

13 THE COURT: All right. Now hang on a minute, Mr.
14 Lauth. So as of that point in time in order for the dismissal
15 to be effectuated, I would of thought it would have had to
16 have been the case that there would be a satisfaction that
17 releases had been signed and settlement funds had been paid.

18 Did you have that satisfaction at the time?

19 MR. LAUTH: No, we do not. We have not received a
20 release from them on the Morris case.

21 THE COURT: So I don't understand how you would ask
22 them to see to effectuating a dismissal under that
23 circumstance.

24 MR. LAUTH: In my correspondence, I asked them to
25 submit a release and sign a dismissal, so that they could be

1 paid.

2 THE COURT: And this was in April of 2011?

3 MR. LAUTH: No, that is in June of 2012.

4 THE COURT: June of 2012. Okay. And you're telling
5 me that June of 2012 -- was the next thing you heard about
6 this, Mr. Cascino's note or email of November 2012?

7 MR. LAUTH: That's correct. On November 8th, 2012,
8 Mr. Cascino emailed me seeking consent to the remand of the
9 Morris case. And at that point in time I replied back, less
10 than an hour later, forwarding him the correspondence that I'd
11 sent earlier to his office reminding him that it was subject
12 of a settlement agreement, and requesting that they submit a
13 release.

14 THE COURT: You mean the -- when you said the
15 correspondence earlier, you meant the June 2012 correspondence
16 to Stambaugh?

17 MR. LAUTH: That's correct.

18 THE COURT: Okay. So what I need to understand is
19 when the A012 submissions were made in September of 2007, I
20 don't remember enough about how those things were being done
21 at the time, was it -- maybe the depository was being used,
22 but there -- were there notification to Westinghouse that an
23 A012 submission had been made on behalf of Mr. Morris back in
24 September 2012, or 2007?

25 MR. EVERT: Probably -- this is Michael Evert,

1 Judge, probably a better one for me to answer.

2 THE COURT: Right.

3 MR. EVERT: The direct answer is, I don't recall.
4 But my assumption is that, as I tried to say earlier, that if
5 we had wanted to find the A012 for the Morris case, we could
6 have found it.

7 Whether it was -- you know, whether we had a copy
8 directly sent to us, whether we had it in our office, whether
9 it was in a depository, I can't answer any of those questions.
10 But we certainly could have found the A012 on the Morris case
11 had we wanted to find it.

12 THE COURT: All right. Okay. So I guess the way in
13 which I was looking at this earlier would have to do with, as
14 I -- and I think I set this out in this email, and what I'm
15 troubled about, and I'm happy for Mr. McCoy or anyone else to
16 chime in on this, is if there is in fact an agreement to
17 settle, and if there's a sufficient basis upon which to make a
18 legal determination that there is an agreement to settle, an
19 issue has been raised with respect to the enforceability of
20 that agreement, and the extent to which the enforceability of
21 that agreement is impacted by the passage of time.

22 The parties seem to agree that Wisconsin law would
23 apply. And my understanding from the parties that Wisconsin
24 law would provide that settlement agreement would be deemed
25 like any contractual action and there would likely be a

1 six-year limitation would be applied.

2 And I haven't seen either side suggest that's not
3 the case. So it seems to me that the question arises,
4 defendants apparently take the position that there is, I
5 guess, the time within which the statute would begin to run
6 would be that time of the agreement. It would seem to me that
7 the time at which the Statute would begin to run would be
8 rather at the time of the breach.

9 And that's, for me, the difficult question. If
10 there is a breach, and there appears to be, who's responsible
11 for the breach, and when did the breach occur? So I guess I'm
12 going to ask either counsel to address that, and I'd ask Mr.
13 McCoy to address it first.

14 MR. McCOY: Judge, I will. But I think there's one
15 more item that we need to make clear on the record.

16 THE COURT: Mr. McCoy, let me -- if you'd be good
17 enough to just answer my question first, and then I'll give
18 you a opportunity to go on to whatever else you want to say.

19 MR. McCOY: Judge, the answer to that question is
20 that there was no agreement, based on custom and practice.
21 That's how the situation develops. Because the trail is cold.
22 We just know there was no agreement based on custom and
23 practice, because there wasn't a release and there wasn't a
24 payment.

25 So -- and it's our position on this that that's the

1 answer. And if Westinghouse thought different, then they had
2 six years from the date of Mr. Vaughan's letter, or you could
3 probably extend that out based on the custom and practice of
4 completing the releases and making the payments within a
5 period of about 90 days.

6 And that would give them six years after that to
7 enforce that agreement, if they thought different. But the
8 position of our firm is there was simply no agreement, because
9 based on custom and practice things didn't happen, and now the
10 trail is cold about that. And that's what Statute of
11 Limitations are about. There isn't a sufficient record after
12 this long passage of time to be able to figure out exactly if
13 anything happened.

14 We just know there was no payment, no release,
15 therefore, no agreement based on custom and practice. So if
16 Your Honor believes that there's a need to find a breach, we
17 disagree with that position. But if there was a breach, it's
18 probably better the words -- we would need to find a breach
19 based on what Your Honor's saying, I think the better way to
20 put it is, there was simply non-performance here of this
21 agreement, and if so, within that reasonable period of time
22 based on the custom and practice, then there's a six-year
23 Statute of Limitations.

24 And so that would be the point where I would say
25 there's been non-performances, that period of about 90 days

1 based on what Mr. Vaughan said, and Mr. Evert confirmed about
2 the practices concerning releases or payments in these
3 situations.

4 So that's how we see it.

5 THE COURT: All right. Mr. Lauth, or Mr. Evert, do
6 you want to respond to that?

7 MR. LAUTH: Your Honor, we believe there was clearly
8 an agreement to resolve the case. We believe that we were
9 ready to consummate that agreement upon submission of a
10 release. We believe that the -- no one has given any
11 indication that there was an potential notice to CBS of a
12 breach, until the submission of the AO12.

13 Whether we saw it or not, if you assume that that's
14 notice of a breach, it was not submitted until September of
15 2007. We're still well within the six years based on that
16 discovery of the breach. And so we believe there was an
17 agreement and the settlement was enforceable.

18 And the fact that one of -- at least one of the six
19 cases that was resolved on that same day wasn't submitted
20 until 2008, is further evidence of the fact that these cases
21 often take a long time, and it's not until we receive notice
22 of the breach that the Statute should begin to run.

23 So we absolutely believe there was an agreement to
24 settle the case. We absolutely believe that we had the right
25 to enforce it and we're within the Statute.

1 MR. McCOY: I'd like to add a couple of more things,
2 Judge, if I can --

3 THE COURT: Is it right on this specific point?

4 MR. McCOY: Yes.

5 THE COURT: Okay. Go ahead, Bob.

6 MR. McCOY: Yeah, there's a case in Wisconsin this
7 CLL Associates Limited Partnership case, which was 174 Wis.2d,
8 604 Supreme Court of Wisconsin 1993 decision, where it talks
9 about the discovery rule and contract actions, meaning you
10 have an extension on your Statute of Limitations period
11 because you didn't discover that there was a breach or a
12 non-performance.

13 THE COURT: Right.

14 MR. McCOY: The Court said that, and I'm quoting
15 from the opinion, and they were comparing it to tort law. But
16 the Court says:

17 "In addition to the distinctions between contracts
18 and tort law, we are persuaded by the fact that the Wisconsin
19 Legislature has expressly rejected discovery rule when
20 enacting the contract statute of limitations. The Court
21 concludes here that there is no discovery rule applicable to
22 contract statutes."

23 Which is what I understand the position of CBS and
24 Mr. Evert's explanation to be, which is, we didn't discover
25 the breach until later.

1 And that simply doesn't matter. There's no
2 discovery rule. The breach occurred when, based on custom and
3 practice, there wasn't performance through a release or
4 payment. And there's no extension of that under the discovery
5 because there's no discovery rule.

6 THE COURT: Okay.

7 MR. McCOY: Now I would say further, Judge, pointing
8 out in this opinion, if you read through it, it says, we
9 recognize -- this is the Court:

10 "We recognize that a contract breach may sometimes
11 be latent, and in practical terms undetectable."

12 So, again, the situation here of people not knowing
13 that there was, at least on Westinghouse's claim that they
14 didn't know about there was a breach, is dealt with in this
15 opinion by acknowledging that there are these latent,
16 undetectable situations, which it doesn't matter, there's
17 still no discovery rule.

18 So that's the Wisconsin law, and that would govern
19 the position that somehow this rule -- that there's a
20 discovery rule that extends out the period of time to 2007, or
21 whenever Westinghouse suggests it should be extended out.

22 There's no extensions allowed under Wisconsin law.

23 THE COURT: Okay.

24 MR. LAUTH: Your Honor, if you want to hear comments
25 on that I'm glad to give them.

1 THE COURT: Yeah, go ahead. Go ahead.

2 MR. LAUTH: I was just going to say, Your Honor,
3 that what is critical to Mr. McCoy's analysis -- first of all,
4 there is the discovery rules from discovery of the breach.
5 And what's critical to his analysis is that purported common
6 practice of 60 to 90 days, and that is belied by the fact that
7 the Neu case was submitted in 2008, and paid in 2008.

8 And, frankly, Your Honor, if the shoe was on the
9 other foot, they would submit a release, if we refused to pay,
10 that's when the breach would occur.

11 So the discovery of the breach doesn't come -- there
12 is no common practice that dictates that the breach occurred
13 within 60 or 90 days, we would dispute that.

14 THE COURT: All right. I'm not sure if this is
15 applicable to this question, but it might be. In the letter
16 that Mr. Lauth prepared in April of 2011, which was submitted
17 to us late yesterday, there is reference to what is identified
18 as Attachment B.

19 And I -- it's unclear to me precisely the number of
20 cases. I think it's something in excess of 400 cases that
21 might be identified on that attachment, and Morris being among
22 them.

23 And I'm -- my -- it looks as if, at this point, in
24 April of 2011 that there is some dispute between Cascino
25 Vaughan and Evert -- the Evert firm with respect to cases that

1 are still pending, or whether or not cases have been resolved,
2 and those are the cases that are, I guess, set out by this
3 exhibit. That's the way this attachment -- that's the way
4 that I see it.

5 So I'm going to ask Mr. Lauth if that's right, I
6 mean, if my understanding is right of what was indicated
7 there, and to explain something about what happened with these
8 other cases, and to the extent those other cases might say
9 something about custom and practice, if you've got as many as
10 400 cases with the Cascino Vaughan firm, and between the
11 defense firm, the Evert firm, and Cascino Vaughan firm, there
12 are apparently 400 plaintiffs out there, in excess, whose
13 cases are apparently in limbo.

14 And the lawyers are unable to agree whether or not
15 they've been settled or unsettled, which sounds rather
16 troubling to me, frankly. But help me out here and explain to
17 me if that's exactly what you were trying to say, Mr Lauth,
18 and what the -- how things came to be in that fashion and what
19 came of it after April 12th of 2011?

20 MR. LAUTH: Your Honor, you are correct in your
21 assessment that there were in excess of 400 claims on the
22 disputed open list. But the important thing I guess to
23 realize is that only a -- that the vast majority of those
24 claims were claims that were Indiana claims, for example,
25 which the Cascino Vaughan Law Offices had agreed to dismiss

1 based on the applicable Statute of Repose defense, that
2 happened under the Judge Reed tenure. I haven't gone back and
3 looked to see how many of those 406, if any, still survive.
4 But the amount of those claims that would have been prior
5 settlement would have been, you know, small, small percentage
6 of them.

7 Morris being one of them, Binder, which we've --
8 which I mentioned, was a paid claim would have been another
9 one. But I have not gone back and recreated how many of the
10 400 or so fit into that characterization.

11 And where are they now? I think the short answer is
12 they've been dismissed due to winnowing down process from
13 Judge Reed and also from Your Honor of these claims from the
14 thousands to the hundreds.

15 THE COURT: Mr. McCoy, can you address that? Or Mr.
16 Cascino, or Mr. Vaughan.

17 MR. McCOY: Judge, this just came in yesterday.

18 THE COURT: Yes.

19 MR. McCOY: If we're having a factual evidentiary
20 hearing, I don't want to commit ourselves. But if you'd give
21 us a moment, let me see if I can give you an answer.

22 THE COURT: Okay. I appreciate that. I'll
23 certainly give you the time you need.

24 MR. McCOY: I'm going to put us on mute here, Judge.

25 THE COURT: Yes, that's fine.

1 MR. McCOY: One second.

2 THE COURT: That's fine.

3 MR. McCOY: I'll get back to you.

4 THE COURT: That's fine.

5 (Pause)

6 MR. McCOY: Judge?

7 THE COURT: Yes.

8 MR. McCOY: I'm back. Okay. Yeah, we've -- we
9 can't answer the question right now. The question was what
10 response was made to this April 12, 2011 letter to Mr. Lauth
11 with these attachments and the 400 cases, we can't answer
12 right now. We don't know. We have to go back through the
13 records and see if anything was -- specifically was sent on
14 this.

15 THE COURT: Okay. All right. So let me just ask
16 just a couple of more questions with respect to what -- where
17 there is -- what there is, or what there might be with respect
18 to this case now. And I'm going to ask you, first of all, I
19 guess it's -- I guess you, Mr. McCoy, I'm not sure on your
20 side, or Mr. Cascino, and Mr. Lauth, as to whether or not you
21 have gone back and looked at the underlying merits with
22 respect to this case, whatever number it was that you may have
23 discussed agreement or "agreed," understanding that Mr. McCoy
24 says no agreement, but there was an -- obviously a reference
25 to a number, which I don't have, it was blocked out in your

1 materials to me, which is fine, by which the case perhaps
2 might be resolved.

3 And if I'm guided by that, have you had any further
4 discussions with respect to whether or not this case could now
5 be deemed resolved, based upon whatever happened previously,
6 or based upon, you know, a fresh consideration? Mr. Lauth?

7 MR. LAUTH: Judge, there hasn't been any further --

8 MR. CASCINO: Excuse me, this is Mike Cascino.
9 Richard and I -- I sent a letter to Richard saying, can we
10 resolve this matter, and he responded by saying that, you're
11 the kind of person that once a settlement is made, a
12 settlement is a settlement, and they were willing to take
13 their chances in Court.

14 So I did make the overture of trying to resolve this
15 matter.

16 THE COURT: Mr. Lauth?

17 MR. LAUTH: Well, Your Honor, I said we'd be glad to
18 honor our settlement of the matter.

19 THE COURT: Okay. And would you be glad to honor
20 your settlement of the matter and take into account in
21 connection with that that there's been no payment on the
22 settlement for in excess of 10 years, and agree to, maybe be
23 legally to entitled to, but agree to the payment of interest
24 over the 10 years for whatever that settlement amount was?

25 MR. LAUTH: The timing for payment would have been

1 from receipt of the release, which we haven't received one
2 yet. So that would be the time that the clock would start
3 running on when the settlement was due.

4 THE COURT: Well --

5 MR. EVERT: I'm sorry, Judge, this is Michael Evert
6 I misunderstood your question, I think. What did you ask?

7 THE COURT: I'm putting on a different hat now. And
8 the different hat I'm putting on is kind of as a settlement
9 Judge. And my question would be whether or not you guys would
10 consider, and I would be -- this is what I was suggesting
11 before and whether or not Judge Robreno makes a hard
12 determination on all this and I sit back to you and talk to
13 you by way of settlement.

14 But you would consider a resolution which would be
15 predicated upon the proposition that this case would be
16 settled based upon whatever number was agreed upon or
17 discussed in the communications with Mr. Vaughan back at the
18 end of 2002, with an allocation, and make an assumption that
19 there would have been a release submitted and payment would
20 have been, you know, legally due and owing, and I understand
21 there's no release submitted apparently, but, you know, assume
22 you've got approximately 10 years worth of interest.

23 It obviously would add up, I don't' know what the
24 legal interest rate is in Wisconsin, but would add up to be a
25 healthy sum in prejudgment interest.

1 And given the fact that your client has had that
2 money and hasn't had to spend that money for ten years, you
3 know, perhaps there's some equities that flow in that
4 direction, would you give consideration to, and if you want to
5 just report back on this separately, that would be fine, but
6 give some consideration to the question of a resolution on
7 that basis, generally speaking?

8 MR. EVERT: We'll certainly talk to the client about
9 it, Judge, and --

10 THE COURT: All right.

11 MR. EVERT: -- if we could get back to you, then
12 we'll be glad to do that.

13 THE COURT: All right. And, Mr. Cascino, do you
14 think that you would be willing to talk to your clients about
15 it on that basis?

16 MR. MCCOY: Judge, there's been a lot of work done
17 on these cases since, that provided additional evidence. So
18 the answer to that is, our firm certainly views this case in
19 light of what we now have in the way of evidence, and we're
20 obligated to treat it in that vein in representing the client.
21 And by that, the factual evidence is just, I mean, the case
22 was settled based on, I think that Mr. Vaughan said no
23 exposure to turbines. We didn't even pursue switch gear
24 claims back in those days.

25 And I'm talking about the 2002 agreement. So today

1 the case has a whole different set of evidentiary points that
2 we would be raising at a jury trial and for summary judgment
3 purposes, if we had to, that involved both switch gear
4 exposures and the exposures to Westinghouse turbine.

5 THE COURT: Mr. McCoy, that sounds to me like a very
6 long way to simply answer my question as no, you wouldn't be
7 interested in talking to your clients about the formulation I
8 suggested. Am I right about that?

9 MR. McCOY: Yes, that's right, Judge.

10 THE COURT: All right.

11 MR. McCOY: Not that we're not interested, Judge,
12 but what we're saying is, from a practical standpoint of our
13 obligations as counsel ,we have all this evidence now that we
14 can't discount that we didn't have in 2002.

15 THE COURT: All right. Hang on a second. Thank
16 you. Hang on one second.

17 MR. McCOY: When the -- when this thing went
18 through, all the procedures, only now to be told, by the way,
19 now that you worked up your case, we have something 10 years
20 ago we didn't pursue that we want to pursue now.

21 THE COURT: Hang on one second.

22 (Pause)

23 THE COURT: Okay. I'm going to ask Mr. Evert to
24 pursue, or Mr. Lauth to pursue what Mr. Evert referred to with
25 respect to these other six -- these other cases. We have the

1 six cases that are identified in the correspondence from Mr.
2 Vaughan to Mr. Evert in September of 2002.

3 And there's one of which apparently was paid in
4 2008, and I want to hear what the defendants -- I want to
5 receive from the defendants a correspondence that would
6 particularize the question of as to each of those cases. I
7 mean, I have what we have in Morris, but to have something
8 anew. But as to the other cases, at what point in time was it
9 that AO12's were submitted with respect to those cases.

10 At what point in time was it releases were submitted
11 in those cases? And to the extent that some of those cases
12 were paid, at what point in time was it that those cases were
13 paid?

14 I'm hearing that -- and it's not clear to me the
15 full extent of the pattern and practice that would have
16 existed between these particular parties, but that to the
17 extent that matters, and it may to us, the information with
18 respect to that might have some particular bearing.

19 So I'm going to ask you if you can pull that
20 together. And you tell me if this is -- I would think this
21 could be done certainly within a week, Mr. Lauth?

22 MR. LAUTH: Yes, Your Honor.

23 THE COURT: And, obviously, you'd provide a copy to
24 Mr. McCoy. And Mr. McCoy would give me a response to that
25 within a week from that date. And then we would make a

1 determination from that point.

2 Okay?

3 MR. LAUTH: Is a letter brief acceptable?

4 THE COURT: Yes.

5 MR. LAUTH: Or a letter submission?

6 THE COURT: Letter brief is fine. Mr. McCoy, are
7 you with me?

8 MR. McCOY: Yes, I understand what Your Honor's
9 asking for. We'll submit that, but I have one other request.

10 THE COURT: Yes. Go ahead.

11 MR. McCOY: I would like to be able to submit a
12 surreply on this case, because in this situation we were faced
13 with a motion to enforce, and in reply Westinghouse has raised
14 the question of a breach and the necessity of that.

15 Which is a new issue that we wanted to make clear of
16 our position on that.

17 THE COURT: Okay. I'll give you the opportunity to
18 file a surreply within one week from today. And within that
19 one week, also Mr. Lauth will have submitted his letter on the
20 question about these other -- the totality of all these six
21 claims. And then you will give me a response in the following
22 week with respect to your response to that letter.

23 If you don't feel you need to, or if you feel you're
24 able to accept what Mr. Lauth presents about the factual
25 circumstances of those cases, just simply indicate that, and

1 then we'll give you a determination promptly -- promptly after
2 we receive those submissions.

3 Mr. McCoy, at one point you said you had another
4 point, and I was trying to hold you to where I was at the
5 time. Is there something else you wanted to bring to my
6 attention on this?

7 MR. McCOY: Judge, the only -- what we can -- let me
8 put it this way, we'll just put that in the reply.

9 THE COURT: Okay. That's up to you.

10 MR. McCOY: Surreply. And I do want to just point
11 out one other thing. Which is, I was just looking through the
12 records, and at least as of November 30th, 2010, Judge Reed
13 had issued orders about the procedures in the Owens Illinois
14 agreements to be resolved.

15 So like Your Honor said, I'm not sure that it
16 matters much but this -- the Owens Illinois did initiate and
17 was the subject of many orders that were by agreement under
18 Judge Reed.

19 THE COURT: Okay. But, you know, ultimately, I
20 think it got resolved by virtue of -- by the time it got
21 resolved, it got resolved by my opinion that obviously took
22 place after Judge Reed had retired.

23 MR. McCOY: Certainly. And we certainly remember
24 that opinion, and appreciated it well when it came in. But
25 I'm saying is that was done pursuant to the agreement of the

1 parties.

2 THE COURT: I get your point. Okay. I get your
3 point. All right.

4 MR. McCOY: Yes. I just think the jurisdictional
5 point here needs to be resolved. It just seems like Your
6 Honor's basically conducting this proceeding under this second
7 section of 28 U.S.C. Section 636, which is to gather the
8 evidentiary facts. And from what Your Honor just said, it
9 sounded like that the recommendation for the decision is going
10 to be coming through Judge Robreno.

11 That's what I gathered but --

12 THE COURT: Well, as I said, I will comment
13 specifically upon that, as to the basis upon which we see the
14 order of reference, and that will give you at least my view
15 with respect to what it means in terms of the effect of it,
16 but that obviously it's going to be subject to whatever it is
17 you're able to convince Judge Robreno about.

18 So you're not -- I'm not foreclosing you from
19 anything here. I'm just -- I'm just telling you that we're
20 going to give this a look whether -- what Judge Robreno does
21 with the look, is going to be up to him. And you can, you
22 know, make your effort to influence him, or argue to him one
23 way or another, depending upon what -- I suppose depending
24 upon what the resolution is from our perspective. So,
25 gentlemen, thank you very much for giving me the time today,

1 and we at least have a way forward with this thing now. Thank
2 you,

3 ALL COUNSEL: Thank you, Judge.

4 THE COURT: Take care.

5 (Recess taken, 11:58 a.m.)

6 (Transcriber Change)

7 (Beginning of afternoon session 2:57 p.m.)

8 THE COURT: Good afternoon, Judge Strawbridge is on.
9 Who's on for plaintiff

10 MR. CASCINO: Your Honor, Mike Cascino. Kevin
11 Hanbury is here, another attorney, and Jason Sheen, my legal
12 assistant, is here.

13 THE COURT: All right, good. Thank you very much,
14 Mr. Cascino. And for GE?

15 MR. FONSTAD: Good afternoon, Your Honor. This is
16 John Fonstad, and in addition my colleagues, specifically Tim
17 Kapshandy and Ed Kenney are on the line.

18 THE COURT: Okay. Anybody else? Okay.

19 Okay. I think that what I want to do here is to
20 kind of give you the current state of my thinking on this
21 motion and get you to respond to it, rather than to have you
22 all go through full presentations.

23 There's been a healthy written submission on the
24 motion, and a response and a reply. We have been through
25 them. We've been through the applicable interrogatories and

1 requests to produce. And I'm going to give you what I would
2 characterize as kind of an indication of leaning of where
3 we're going, and then as I say, give you a chance to reply.

4 First off, I appreciate from GE's perspective the
5 positions articulated with respect to the lack of timeliness
6 of the discovery. I would conclude however that under the
7 overall circumstances of the way these cases have progressed,
8 that I'm not going to preclude the interrogatories from going
9 forward or being answered, you know, appropriately, simply
10 based upon the question with respect to any late requests for
11 discovery as posited by GE or any delay between the time of
12 the answers and the time of the filing of the motion.

13 And I want to proceed rather to the question of the
14 merits of the particular interrogatories and the interrogatory
15 responses. So I'll do that now but I'll give you an
16 opportunity, if you want, Mr. Fonstad, to try to elaborate on
17 that. But let me move to the particular interrogatory answers
18 if I could.

19 I think the first, the threshold question as I see
20 it, is the issue with respect to the extent to which the
21 plaintiffs have provided information pertaining to Mr.
22 Sypchalla's potential exposure to GE related products. And
23 Mr. Fonstad has effectively demonstrated what certain
24 limitations are, including an apparent reliance upon a
25 deposition which has been quashed -- I'm referring to Mr. Sal

1 or Sallie (sic) or something, and some other bits of
2 transcripts of depositions which apparently indicate that
3 particular witnesses that have been cited by the plaintiffs
4 have not articulated or have not testified specifically that
5 they ever actually saw Mr. Sypchalla in the presence of
6 something that they could identify as GE parts or working in
7 specific manners in which there would have been some direct
8 specific evidence with respect to exposures.

9 Nevertheless, as I read this and as I see this, I
10 understand it to be the case that there's at least evidence
11 that there were GE engines on two, apparently two, at least
12 two apparently types of aircraft that were being worked on,
13 referring to these Falcons and these Challengers, and as I
14 understand it anyway, and that there was some testimony from
15 certain of the witnesses that there were these kinds of
16 aircrafts that were at certain of the locations involved. I
17 think the principal focus seems to be this KC Aviation
18 location during the time frames that Mr. Sypchalla worked
19 there and where generally that he would have been working
20 there.

21 And I'm satisfied that for the purpose of discovery,
22 certainly not -- it would be an entirely different question as
23 to whether or not this establishes legal causation. But I
24 think for the purposes of moving forward to the next step with
25 respect to discovery, that that does trigger enough that it

1 would be appropriate for the defendant to apply some kind of a
2 response.

3 Now, the next thing that strikes me is that there is
4 apparently some evidence, I don't know how extensive it was,
5 of something in the nature of a meet and confer, at least it
6 was so certified in one of the paragraphs of the motion which
7 was filed by Mr. Cascino.

8 But I have to tell you that as I look through this,
9 I kind of thought to myself, wouldn't this have been more
10 productive to have been done in the mode of a 30(b)(6) type
11 deposition where there could have been some true explanation
12 provided with respect to the nature of the manner in which GE
13 does or does not keep or maintain records.

14 It is implicit, as I see it, and perhaps explicit
15 from other information that's out there, and I suspect Mr.
16 Fonstad will make some admission explicitly with respect to
17 some record keeping having been done by GE.

18 I assume, and there's probably a record in the
19 various places, that given GE's involvement as a frequent
20 defendant in asbestos litigation, there's been some
21 organizational efforts with respect to the maintenance of
22 certain data.

23 And I would have -- I want to focus a lot of the
24 discussion that we have today on what the circumstance of that
25 data collection is, and how that data collection would bear

1 upon the questions with respect to burden.

2 And that's the -- that's an area that I would have
3 thought or I would have hoped that there would have been
4 exchange in terms of an extensive and meaningful meet and
5 confer between Mr. Cascino and Mr. Fonstad or some other
6 representative of their firms, in order to try to explore
7 things like, you know, what are the types of engines that
8 would -- that they might have used on these particular
9 aircrafts that have been identified, the admission to certain
10 GE engines that are sometimes used on these aircraft, during
11 what time period, during the time periods that are involved,
12 which I appreciate it's a broad time period, but at least has
13 been limited somewhat from what it was originally down to, as
14 I understand it, 13 years from 1978 to 1991 at this location.

15 I don't know whether or not GE tracks records based
16 upon a particular location where someone works. It strikes me
17 they may or may not, I don't know, but I would want to hear
18 about that. I thought maybe I did see something in one of
19 your responses, Mr. Fonstad, that there was no tracking on
20 that basis, in terms of the sales records which are in some of
21 the earlier interrogatories, 2 and 3 and 4 I think.

22 But to the extent to which there would be records
23 that would show sales of the products to particular employers,
24 it seems to me it needs to be refined. I would guess that the
25 real question ought to be whether or not they are -- may be

1 employers I guess, but the extent to which they would provide
2 parts to those folks who would be the companies that would be
3 working there, who would be in a position to purchase the
4 parts.

5 I'm just thinking of a situation where -- and I
6 don't know if this is applicable with Sypchalla -- who might
7 simply work for a, you know, a delivery person and would show
8 up and would be on the site for some period of time, even
9 though his particular employer would not have been the enemy
10 that would have acquired, that would have purchased the
11 engines.

12 But I think these are the kinds of things that I
13 would have expected some discussion about. And I'm going to
14 -- the bottom line of this is that I'm very inclined to order
15 that there be a robust meet and confer process dealing with
16 some of these things, but I do want to hear, I think initially
17 from Mr. Fonstad with respect to some elaboration on the way
18 and the manner in which GE records are kept, as it would
19 relate to a significant narrowing -- and I appreciate, Mr.
20 Fonstad, that you may have taken a position that there has not
21 been a sufficient narrowing, or the manner in which any such
22 narrowing might have been done -- but nonetheless a narrowing
23 that would go to engines or engine parts that would be related
24 to the engines, aircraft engines used on these aircrafts that
25 have been identified at this location during this time period.

1 So that's generally the way I see all this. And
2 frankly, part of me says I wish I hadn't -- I wish I had
3 picked this up and looked at it rigorously back in November
4 when this motion was first filed and maybe we could have cut
5 through some of the delay that we've had so far.

6 But, this is where we are now, and that's the
7 inclination I'm at. So, Mr. Fonstad, let me hear from you --
8 I'll give you the opportunity to address any particular issue
9 you want, but as you've heard, I really want you to focus upon
10 the manner in which GE does maintain whatever records it may
11 have.

12 MR. FONSTAD: Thank you, Your Honor. And I'll
13 address that corporately, but first, just on the procedural
14 issue. I respect your ruling. But the only thing I would
15 comment on that is that the procedural, and the timing of the
16 discovery request, certainly plays into the response that GE
17 had.

18 Where, there was a discovery request that Mr.
19 Cascino served with the 22 different aircrafts, none of which
20 were the Falcon or the Challenger. And also at the time that
21 these discovery requests were served, we didn't even have the
22 deposition transcripts that provided the discovery that serves
23 as a basis for the claims about the Falcon and Challengers.
24 Those depositions took place after October 1st.

25 So a lot of this -- we're dealing with, what is

1 essentially plaintiff's retroactive and bladed attempt to
2 change their interrogatory requests to GE to now comport after
3 the close of fact discovery, with whatever the evidence that
4 they produced after the close of -- after the close of fact
5 discovery resulted in.

6 And I think that's kind of one of the troubling
7 aspects of this for GE, where it seems like plaintiffs are
8 allowed to benefit from their own deleteriousness and delay in
9 this litigation.

10 But to address --

11 THE COURT: Let me just respond to that, to say that
12 I think that you have set that proposition out very well in
13 your papers. I think it is set out in a persuasive way, and I
14 completely get the point.

15 Nonetheless, I still think on balance, given where
16 we were on all of this, and given the fast, as you know we
17 had, maybe not from plaintiff's perspective but at least from
18 my perspective, we have been a bit forgiving and we've been
19 more flexible with respect to some of the minor delay issues,
20 or what I would concede are minor is in terms of specific
21 dates or a couple of weeks delay issues that are involved, and
22 I'm working off of what I have now, and I'm -- I don't know if
23 I ever would have focused on exactly when you would have
24 received certain information, but nonetheless, I'm working off
25 the record I have now, so --

1 MR. FONSTAD: And I appreciate that, Your Honor.

2 THE COURT: -- just so you know --

3 MR. FONSTAD: I guess then getting to the bulk of
4 your questions concerning what GE documents are available and
5 the like. I'm going to turn this over to my colleague, Ed
6 Kenney who has dealt with the aircraft litigation for GE in
7 the past. And the only thing that I would comment before Mr.
8 Kenney proceeds is that some of Your Honor's assumptions about
9 what GE's documents may exist and when aircraft even kind of
10 came into the realm of the asbestos litigation may be a bit, a
11 bit incorrect.

12 And now I'll let Mr. Kenney explain how the
13 documents exist, what we have concerning these two different
14 types of planes.

15 And then the only other bit of background is that
16 the two different types of planes that are there that are at
17 issue, the Falcons and the Challengers, are actually families
18 of planes.

19 THE COURT: Okay.

20 MR. FONSTAD: The GE engine could only have been in
21 some of the models within those families. And even if a
22 particular model within the family had a GE jet engine, it
23 doesn't mean that every model of the plane in that family had
24 a GE jet engine.

25 THE COURT: So --

1 MR. FONSTAD: But with that, I think I've spoken
2 enough and I'll let Mr. Kenney speak.

3 THE COURT: Well, let me just commend you for the
4 rather polite way in which you told me that my basic position
5 was absolutely incorrect and perhaps worse, but I hear that
6 and I think it might be a distinction that's worth noting, as
7 I think I've seen you point out in other documents there would
8 be, perhaps, you know, who knows, hundreds, thousands,
9 millions of particular products, or when you break it down by
10 models that GE would have produced over time, and shame on me
11 if I'm trying to throw out some kind of blanket assumption.

12 So I will hear, I'd be interested to hear what Mr.
13 Kenney has to say about this.

14 Mr. Kenney, would you be good enough to identify
15 your firm and let me know whether or not your appearance is
16 actually entered in the --

17 MR. KENNEY: Yes, my appearance is entered. My name
18 is Edward Kenney, K-E-N-N-E-Y, and I'm with Sidley, Austin.

19 THE COURT: Okay.

20 MR. KENNEY: Representing General Electric Company.

21 THE COURT: Thank you, Mr. Kenney, I'm happy to hear
22 from you.

23 MR. KENNEY: Okay. First of all, what Mr. Fonstad
24 said about GE obviously has been involved in some asbestos
25 litigation involving aircraft engines over the years. The

1 first one that I can recall was back in probably 2000 -- early
2 2000 to 2003, 2004, somewhere in that neighborhood.

3 GE does not maintain a central repository of
4 documents concerning aircraft engines. GE has over the years
5 manufactured a number of different aircraft engines at two
6 principal locations, Lynn, Massachusetts and Evendale, Ohio,
7 and the records tend to be kept on an engine, specific
8 records, engine specific basis in the location where the
9 engines are manufactured.

10 The two engines that are potentially at issue in
11 this case, and I should say the two engine families, are the
12 CF700 in the case of the Falcon, and the CF34 in the case of
13 the Challenger. And there's a number of different variants of
14 each of those that could potentially have been in, for
15 example, in Falcon jets there's three different variations of
16 CF700's that could have been present in a Falcon jet. And in
17 terms of CF34's, from what I understand, there's probably four
18 or five different variations over the years that were used.

19 As Mr. Fonstad indicated, in the case of Falcon
20 jets, there were other engines that were also used. Some of
21 the Falcons have Garrett engines which GE did not manufacture.

22 In the case of the Challengers, I believe some of
23 them, the early versions of them had Lycoming engines which GE
24 did not manufacture.

25 Now in terms of what records would be available, to

1 determine whether or not GE engines were present at the KC
2 Aviation facility in Appleton, Wisconsin during the years,
3 between the years 1978 and 1991.

4 I talked to the engine managers for both the CF700
5 and the CF34 and from what I've been told there are no sales
6 records that were, that are available that would be able --
7 that would enable us to determine whether or not a particular
8 GE engine went to KC Aviation.

9 Let me just explain that typically, and typically in
10 the case of business or executive jets, GE doesn't sell the
11 engines or didn't sell the engines to a company like KC
12 Aviation. They sold them to the air frame manufacturer, which
13 in the case of Falcon jets was Dassault, it's a French
14 company. In the case of the Challenger jets, it was
15 Bombardier.

16 So basically GE would have sold the engines to
17 Dassault in the case of Falcons. Dassault would have put the
18 engines on the jets and sold them to whatever customer they
19 sold them to. Same thing would be true with the CF34 engines
20 that were sold to Bombardier. And from what I understand from
21 the engine managers, GE does not have sales records that go
22 back that far.

23 Basically the Falcon, the CF700 program goes back to
24 the late sixties and production of CF700's was discontinued in
25 1982. So, their sales records that would basically show how

1 many engines were sold to Dassault and when they were shipped
2 and that sort of thing don't exist anymore.

3 In the case of the CF34, they're still being
4 produced. Its production of that model, of that engine family
5 I should say started in about 1978 or thereabouts. And they
6 are still being produced. But we don't have sales records
7 that date back to the seventies and eighties in terms of
8 particular CF34 engines that were sold to Bombardier for
9 inclusion on Challenger aircraft.

10 So, in terms of what records may still exist, one of
11 the things that plaintiff indicated they were very interested
12 in obtaining was technical manuals that would have been
13 involved in maintenance of those particular engines. And I
14 checked to see, you know, what was available with respect to
15 those technical manuals.

16 Technical manuals are prepared by GE for engines it
17 produces. There's technical manuals that exist for the
18 CF700. There's also technical manuals that exist for the
19 CF34. The way that these records, the way the technical
20 manuals are maintained is, we would be able to produce the
21 records -- the manuals as they exist today.

22 They go through a revision process, revised for a
23 number of different reasons. They're revised for issues that
24 might come up during operation of the aircraft and the
25 engines. They may be revised due to issues that are addressed

1 by customers or by the FAA. And essentially what GE does is
2 modify the manual and provide the revised versions of it to
3 customers.

4 What we have today is we have the present version of
5 the technical manuals for the CF700 and the present version of
6 the manuals for the CF34. We might have some -- and they are
7 not maintained all in one place. We don't have all the
8 background information that went into the revisions. There's
9 really no reason to keep, in the case of the CF700, all the
10 revisions that you know, occurred from 19 -- the late 1960's
11 to today. So the manual that we have today basically
12 represents the manual as revised over the years.

13 Some background may still be available, although
14 it's not organized in one particular place. And it would
15 take, from what I have been told, a effort to find and collect
16 the revisions to the manual over the -- even in recent years.
17 And in terms of all the revisions going back to when the
18 manual was first created back in the late sixties, a lot of
19 that documentation probably no longer exists. And what does
20 exist would be very difficult to locate.

21 THE COURT: Let me just interrupt you for one
22 second. And again, I don't know enough about airplanes. But
23 isn't there some place, whether it's your own historical
24 reference or some kind of GE airplane engine, you know,
25 historical whatever, that they would keep track for whatever

1 purposes, old manuals that would be --

2 MR. KENNEY: No. In fact, Your Honor, the FAA kind
3 of discourages that, because originally as you can imagine,
4 the manuals were produced in kind of looseleaf form. And when
5 revisions were made, revised pages were sent to the customers
6 and that sort of thing.

7 More recently, now it's done, they're done in PDF
8 form. But the FAA has always discouraged keeping old manuals
9 around because they don't want people who would be relying on
10 the manuals to be relying on old information. So GE does not
11 have old copies of the manuals.

12 Like for example, they wouldn't have a copy of the
13 CF700 field level maintenance manual for the CF700 for, as it
14 existed in 1985 or any other year before that.

15 THE COURT: So you're a hobbyist and you have money
16 and you get a hold of a 1985 whatever, Falcon or Challenger,
17 and you needed to repair it, there's no manual that exists?

18 MR. KENNEY: A manual exists for the CF700, you
19 know, as revised up until the present time. So all the, all
20 the changes that have been made and all the maintenance
21 improvements and that sort of thing that have been made over
22 the years, that's available to people who subscribe to the
23 manual, owners of that engine.

24 But in terms of you know, could you get a 1985
25 manual or version of the manual as it existed in 1985, you

1 couldn't get it from GE. Now whether you could get it from
2 some private source or not, I don't know, but GE does not keep
3 copies of the old manuals.

4 THE COURT: Okay.

5 MR. KENNEY: As they're revised, they're updated
6 basically and revised. And what we have today is the manual
7 as revised through 2013.

8 With respect to the CF700, remember it hasn't even
9 been produced since 1982.

10 THE COURT: I guess I just wonder how much that
11 helps you if you're trying to repair a 1975 aircraft.

12 MR. KENNEY: Well, I've never repaired a 1975
13 aircraft, Your Honor, so I'm not sure. But my understanding
14 is, as far as the aircraft, as far as the engines that still
15 exist, they've gone through two or three different owners at
16 least.

17 THE COURT: Okay.

18 MR. KENNEY: And so, somebody who is maintaining a
19 CF700 engine as it exists today would, should at least in
20 accordance with FAA requirements, should use the manual as it
21 exists today.

22 THE COURT: Okay. So I interrupted you, so go
23 ahead.

24 MR. KENNEY: No, that's okay.

25 And CF34 is the similar situation. We don't have

1 sales records that go back to the 1978 to 1991 period that
2 would show which engines were sold to Bombardier for the most
3 part.

4 We don't think -- in some cases, the larger airlines
5 might buy a spare engine, like United Airlines or somebody
6 like that, might buy an engine specifically from -- a spare
7 engine from GE to use on their particular maintenance
8 operations. But, we don't believe that -- and we haven't
9 found any record that indicated that KC Aviation would have
10 ever purchased an engine directly from GE.

11 It's my understanding that they would have been
12 working on aircraft that were manufactured by Bombardier.
13 Bombardier would have purchased the engines from GE. And so
14 we don't have any ability really to determine which CF34
15 engines went to, or ended up at KC Aviation. That would
16 depend on who was operating the aircraft and that sort of
17 thing.

18 THE COURT: Okay. So --

19 MR. KENNEY: I'm sorry, go ahead.

20 THE COURT: So if I'm an aircraft mechanic at KC in
21 the 1980's and I'm working on a Bombardier aircraft with a GE
22 engine, and I needed a replacement or find some components to
23 work on it, I would go to, call Bombardier or go to Bombardier
24 and they would then --

25 MR. KENNEY: Or you would have had a technical

1 manual as it existed at that point in time.

2 THE COURT: Okay.

3 MR. KENNEY: And basically, as I understand the way
4 that companies that do maintenance -- now I don't know exactly
5 what kind of maintenance KC Aviation was doing, and what
6 manuals it would have had in its possession would depend on,
7 because there are different manuals for different purposes.

8 THE COURT: Sure.

9 MR. KENNEY: There's -- there are basically three
10 different, or three major types of maintenance that go on on
11 aircraft and aircraft engines. There's field -- and there's a
12 different manual for each one. There's basically a field
13 level maintenance manual, there's an intermediate maintenance
14 level and then there's an overhaul maintenance level. And
15 I've not seen any indication or any evidence to suggest that
16 KC Aviation was doing overhauls of GE engines.

17 So which manuals they would have had in their
18 possession would depend on what exactly they were doing.

19 THE COURT: I got that, okay.

20 MR. KENNEY: And we don't have the ability to track
21 that either back, you know, at that point in time. And as I
22 understand it, KC Aviation has been -- it doesn't exist
23 anymore. It now is Gulf Stream.

24 So anyway, if you were doing maintenance on an
25 aircraft in 1985 or on an aircraft engine in 1985, what you

1 would have, what you should have would be the manual, the
2 technical manual as it existed at that point in time. And you
3 would have been, if you were a subscriber to the manuals, the
4 GE manuals, you would have been provided with the revisions as
5 they were adopted by GE and approved by the FAA. GE would
6 send those to you. You should, what you were supposed to do
7 was replace the section of the manual that had been revised
8 and get rid of the old part, and then rely on that manual as
9 revised. That's how the system worked.

10 So, and what we have in the case of both the CF700
11 and the CF34 is we have the manuals as they exist today, and
12 as they've been revised over the years. We have some backup
13 that when they made a revision, we don't -- certainly with
14 respect to the CF700, we don't have anywhere near all of it,
15 at least in a way that it can be located without a tremendous
16 amount of effort.

17 And with the case of the CF34, my understanding is
18 it's been in production since 1978. The manuals have been
19 revised more than 50 times. And it would be a -- it would
20 take a tremendous amount of effort to try and figure out and
21 find all the documentation that may have gone into any of the
22 revisions. Probably the more recent ones it might be a little
23 bit easier, but the ones going back to the seventies and
24 eighties, if they still, if all that backup exists at all, it
25 would be extremely difficult to find it.

1 THE COURT: Okay. So, then I'm hearing that to the
2 extent that there may be, and I guess I've heard you say that
3 based upon your inquiries, there are not. But to the extent
4 that there may be any sales records available that would
5 relate to GE engines, they would not be organized in any way
6 that would show to KC Aviation, and you have nothing on
7 KC Aviation in your materials, as far as you know?

8 MR. KENNEY: That's correct.

9 We don't think -- frankly, Your Honor, we don't have
10 records that show sales to KC Aviation. We don't think that
11 there's any likelihood that their engines would have been sold
12 to them, that they -- and we don't have sales records that go
13 back, you know, to anybody back in the early, in the case of
14 the CF700 we're talking late sixties, early seventies. We
15 don't have sales records at all for those.

16 But we think that where they would have been sold
17 would have been to Dassault. What the Dassault has in France,
18 we have no idea, in terms of what records they have.

19 And basically what happened, Your Honor, was GE
20 would sell the engines to an aircraft manufacturer; in the
21 case of the Falcons it was Dassault, in the case of the
22 Challenger it was Bombardier. And so they would sell it to
23 the airframe manufacturer. The airframe manufacturer would
24 put the engine on its aircraft and sell it to whoever they
25 would sell it to.

1 I'm not sure that we've seen information as to these
2 aircraft that were allegedly present at KC Aviation, who
3 actually owned them.

4 THE COURT: Right. Okay. Let me ask you just to
5 follow-up on this, and then I'm going to ask Mr. Cascino what
6 comment he wants to make about this, or any other information.

7 On -- I don't know how familiar you are with the
8 specific interrogatories, but one of the interrogatories for
9 which there's a bit more of a robust response is number 9, and
10 it -- just give me your answer to this. You circled around it
11 certainly, but they asked for does the defendant GE have
12 records concerning the sales of asbestos-containing products
13 used in the aircraft industry during the period of 1958
14 through 1991.

15 That interrogatory I think has effectively been
16 amended by the plaintiffs to indicate that they would be
17 concerned with the sales of asbestos-relating products or
18 components in jet engines or jet engines at KC Aviation
19 between 1978 and 1991.

20 Do you believe you covered that by virtue of the
21 answers that you've given me so far?

22 MR. KENNEY: Well, Your Honor, I think what we said
23 in our answer was that there were, there were asbestos-
24 containing components in aircraft engines historically.

25 THE COURT: Right.

1 MR. KENNEY: And over a period of time, those
2 components were eliminated. In terms of the CF700 and the
3 CF34, the kind of components we're talking about are clamps,
4 gaskets and basically we're talking about clamps that are
5 maybe a couple of inches, two, three inches, J-shape type
6 clamps that had a asbestos-containing cushion on them that
7 would hold hoses and that sort of thing in place.

8 The gaskets would typically be, I would say three
9 inches maybe, sometimes rectangular maybe two-by-three inches.
10 In many cases, the gaskets would be, would have basically kind
11 of a metal sandwich with some asbestos-containing material in
12 between.

13 Those were the kind of parts that were included in
14 the engines. And GE eliminated those over a period of time.
15 In terms of -- I think I mentioned that there were a number of
16 different variants of the engines that were used on Falcon
17 jets, I think I was told somewhere, three different variants,
18 and four or five different variants on the CF34's that were
19 used on Challenger aircraft.

20 We do have some drawings, historical drawings, that
21 show the particular parts and that sort of thing. And the way
22 that GE drawings are maintained is there's an overall drawing
23 and it references down to very detailed drawings. And there
24 in many cases would be potentially hundreds or thousands of
25 them altogether.

1 We do have some information concerning asbestos-
2 containing parts that were included in these engines over a
3 period of time. But whether you would even -- or whether
4 someone would even potentially have access to them would
5 depend on exactly what kind of work they were doing.

6 And typically, the asbestos-containing components
7 were in the hot end of the engines, and would only be exposed
8 if a major overhaul was conducted.

9 THE COURT: Right, okay.

10 MR. KENNEY: I don't know if that addresses your
11 question, Your Honor, but that's about the best way I know how
12 to try to address it.

13 THE COURT: All right. Where would these historical
14 drawings be located?

15 MR. KENNEY: They're located, I believe the drawings
16 for both these engines would be in Lynn, Massachusetts.

17 THE COURT: And would these cover the 1978 to 1991
18 time periods?

19 MR. KENNEY: It would cover the period up to the
20 present. And again, you know, they're revised over time as
21 well.

22 So going through a search of those particular
23 drawings would be a major, a major effort.

24 THE COURT: Right. Okay. Is there any more
25 specific information you have with respect to the, you said

1 some of the asbestos-containing specifics, or whether they're
2 components or whatever, all these engines were eliminated over
3 time, do you have any -- does your information have any more
4 specific information about that?

5 MR. KENNEY: Not really, Your Honor. It's -- the
6 information that, the historical information that we have
7 particularly is not very organized. And in order to try and
8 find every potential reference to, you know, these are small
9 parts. To find every reference or potential document that
10 would be potentially responsive would be, would take a --
11 would be a tremendous effort.

12 THE COURT: All right. Mr. Cascino, is there
13 anything -- I want to give you an opportunity to comment here,
14 or any issues you want to raise?

15 MR. CASCINO: Yes, Your Honor.

16 Number one, the plane family for the Challenger
17 would be the CL-601 during the time period that -- right,
18 Jason -- okay, and Your Honor, only 60 of those, just for your
19 information, that are active today. They stopped making them
20 in 1987.

21 The engine has a CF34 family as counsel indicated,
22 most likely it's CF34-3A was the engine that was the GE engine
23 used on the Challenger.

24 With regard to the Falcon jet, most likely they had
25 a GE CF700-2D-Z engine in them. Again, there's not a lot of

1 these planes in either case that are out there. I think as of
2 today there's roughly 33 of these Falcons that have GE
3 engines.

4 We are interested in going and looking at the
5 drawings that they do have. It is my understanding from
6 talking to -- oh, I'm sorry, it's 2D-2, I'm being handed a
7 note on the -- on what, Jason -- on the Falcon I gave the
8 wrong thing, it's 2D-2.

9 With regard to these drawings, it's my understanding
10 from an expert that I've retained, that you can go back, you
11 start with the original engine and then you, whatever the
12 engine is, and I just told you, we think we even know what
13 engines there are, and then you go look at that, and then
14 there's, the asbestos parts which the defendants admit in one
15 of their responses on page 13 which are clamps, seals,
16 adhesives, straps, troughs or gaskets in that they have.

17 You would then work your way backwards on those
18 drawings to look at the actual piece that you're talking
19 about, which could be identified by looking at the master
20 drawing, and you'll have like, you'll have like numbers and
21 then you go to those pages or whatever, and then you can see
22 what that is actually made out of.

23 Of course, our interest from these drawings is when
24 do they have asbestos in them and when do they stop having
25 asbestos in them. That's important from our perspective.

1 I would like to make a comment too, that counsel
2 keeps talking about sales records. And you know, we use the
3 words sales of products or services.

4 Number one, GE supplied parts. And counsel did not
5 mention any of that. And so if they were to take off, if they
6 were to work on a GE engine, they would do certain things
7 every six months. The way they do the service on these is
8 they would do service for six months service, and a different
9 service in six months, and a different service another six
10 months later. So that the servicing of these engines went
11 over, unless there was a problem with them, went over a period
12 of months.

13 Secondly --

14 THE COURT: Mr. Cascino, can I interrupt you on that
15 and ask Mr. Kenney to respond to the question about service.

16 MR. KENNEY: About parts?

17 THE COURT: Yes.

18 MR. KENNEY: And service.

19 THE COURT: Yes.

20 MR. KENNEY: Well, first of all, although GE does
21 service engines for, as a contractor for customers, we don't
22 know that -- and there's no way to tell whether or not we
23 would have performed any service on the aircraft that would
24 have, or engines that would have been present at KC Aviation.
25 Probably not. But there's really no way for us to tell.

1 In terms of parts, GE does provide parts if
2 requested by customers. We don't have records of parts that
3 would have been provided to KC Aviation back in that time
4 frame. It's too distant.

5 But the other thing too to understand is that many
6 people, many companies that service aircraft or who own
7 aircraft, can find out who the -- basically any of these
8 asbestos-containing components that were formally in GE
9 engines were basically provided by third-party vendors. And
10 the third-party vendors are pretty well known to people in the
11 aircraft industry. And it was pretty common, from what I
12 understand, for people servicing aircrafts to purchase these
13 sorts of parts directly from the vendors rather than from GE,
14 because it's cheaper for them to do it.

15 THE COURT: Okay. All right, Mr. Cascino, go ahead.

16 MR. CASCINO: My understanding is that these engines
17 are serviced, and they did not do the overhauls in the sense
18 that what Mr. Sypchalla would have done is he would have
19 inspected the engine, he might remove a gasket or fix it if
20 it's small like that, but mostly they would take these
21 aircraft engines off and in the process of taking them off,
22 there were certain gaskets and things that were going to be
23 disturbed, and then they would ship the engine to General
24 Electric who would do the work on the engine, and then GE
25 would ship the engine back.

1 And I'd be shocked if GE doesn't have those kind of
2 records of those transactions going because you're talking
3 about a jet engine being transferred. And there's not many of
4 these planes.

5 I mean, understand that you know, you're talking
6 about very, very few planes in total. You know, there might
7 be as I said, 33 Falcon jets that would have had the GE
8 engine. Or, you know, there -- the plane family for the GE
9 engine with the Challenger is a CL-601. So there's not that
10 many of these things, these airplanes that are out there that
11 have the GE engines on these specific types of aircraft.

12 MR. KENNEY: Can I respond to that?

13 THE COURT: Please.

14 MR. KENNEY: There is, my understanding is there is
15 somewhere in the neighborhood of a thousand CF700's that were
16 manufactured. And in the case of the CF34's there's somewhere
17 in the neighborhood of 1800 engines that were manufactured for
18 business-type executive jet type service, and probably another
19 1800 that were manufactured for retail jets.

20 And in terms of, my understanding is, in terms of
21 the Falcons, that there were somewhere around -- originally,
22 now we're talking about back in the sixties and seventies,
23 somewhere around 400 or more of them that were manufactured.

24 So I think Mr. Cascino is right, in that the number
25 of them that presently exist is pretty small. But this is 20

1 years after, more than 20 years after the fact.

2 THE COURT: All right.

3 MR. CASCINO: Again, there are 400 of the Falcons
4 counsel is indicating, that's not a whole lot.

5 And again, with the other, I don't know whether he's
6 talking about the 1800, -- counsel, are you talking about the
7 ones with GE engines in it or are you --

8 MR. KENNEY: I'm talking about CF34's that were
9 manufactured for business or executive jet type service.

10 MR. CASCINO: Okay. And are you talking about the
11 ones that have the CF34 --

12 MR. SHEEN: Referring to the number of the engine.

13 MR. CASCINO: Oh, number of the engine.

14 MR. KENNEY: Yes. And just to put things in a
15 little bit of perspective. My understanding is the Falcons
16 each had two engines on them, as did the Challengers. So one
17 aircraft isn't one engine. One aircraft is two engines.

18 MR. CASCINO: And we're not dealing with a whole lot
19 of airplanes. And when you said 1800 plus 1800 or whatever,
20 are you including the ones that would not have had a GE engine
21 or are you talking GE engines?

22 MR. KENNEY: No, I'm talking GE engines, CF34's that
23 were manufactured. Some on Challengers, some on other
24 aircraft. That's 1800 for business -- they sort of
25 categorized them as either business or executive type aircraft

1 like the Challenger.

2 MR. CASCINO: The records on the CF was 34-3A or 2A?
3 CF34-3A.

4 MR. KENNEY: Well, I mean we really didn't have,
5 until now, identification --

6 MR. CASCINO: Is that something you can provide?

7 MR. KENNEY: Is that something we can provide?

8 MR. CASCINO: Yes.

9 MR. KENNEY: In terms of what?

10 MR. CASCINO: Well, in terms of the design or the
11 designs, the drawings that you talked about, records of parts
12 from GE, the service of these engines from GE?

13 MR. KENNEY: Well, I don't -- from what I
14 understand, we could not provide that, at least part
15 information on that sort of thing dating back to 1991 and
16 before, more than 20 years ago.

17 THE COURT: Let me just, what I'm -- I think what
18 I'm kind of concluding from this is that yes, there are, there
19 were obviously documents that GE would have had that would
20 pertain to the sale or even products or parts used in
21 servicing of these aircrafts. They don't seem to be
22 particularly -- even though it might be a small number of
23 planes involved, at least as of today a small number of
24 planes, organized in a way that would make easy reference to
25 them, at least from what we're hearing.

1 But I think there's potentially relevant evidence
2 out there, which to me would at least meet the threshold
3 admissibility question. And I think this comes down, is
4 likely going to come down to a question of burden relevance as
5 to burden kind of question.

6 And I think the only way for me to sort through
7 that, and Mr. Kenney has made broad general references I think
8 as to the difficulties of trying to accomplish things and has
9 given us some information, but I think what the productive way
10 to proceed with this would be dealing now with what I think is
11 a lot -- I trust and I hope you agree, Mr. Fonstad, is much
12 more specific information than you would have had before from
13 Mr. Cascino, since the process helped at least in that regard,
14 and Mr. Cascino at least has some understanding as to what
15 they did have, perhaps don't have anymore but what they did
16 have, that there be a revision to be very promptly done from
17 Mr. Cascino as to the narrow specifics of what's being looked
18 at, which I think one could do based upon what is on this
19 record here today, and whatever elaboration needs to be
20 obtained with consideration of this record here today.

21 And then, that can be assessed from the perspective
22 of GE in terms of burden that might be applicable. I think
23 it's best -- I don't know that we have to have affidavits in
24 connection with ascertaining burden based upon consideration
25 of what appears reasonable in our experience, but I do think

1 affidavits or declarations are helpful in that regard.

2 And I think against that, depending upon if there
3 are circumstances that there can be an indication of a further
4 search, and that further search bears fruit or not bear fruit,
5 there can be declarations that would address that question.
6 And then declarations might address the question of a more
7 extensive burden.

8 But I'm hearing this now to be limited to these two
9 types of aircraft, these two types of engines, somewhat
10 limited. The time period is now a lot more limited. There is
11 a specific identification of small components, of small
12 aspects of these things, perhaps not readily accessible
13 according to Mr. Kenney, but nonetheless present with asbestos
14 in them. And we don't have clear information yet as to when
15 it was that those components would have been eliminated, and
16 that would obviously be relevant information.

17 But I think that this ought to be -- I've heard
18 enough here to say that this ought to be developed a bit more,
19 both from the perspective of the narrowing of the request, and
20 Mr. Cascino, I'm happy for you to say you stand on the record
21 based upon what you articulated here today and what came out
22 from what Mr. Kenney has said today. If you want to
23 supplement it a bit more in terms of a letter that would be
24 somewhat specific and you can do it very promptly within the
25 next two or three days, that would be okay too.

1 And then, we'll give the defendants, we'll give GE
2 an opportunity to respond. That's the way I think it makes
3 the most sense to proceed.

4 MR. CASCINO: That's fine, Your Honor. I just need
5 -- it will take me till Tuesday, the 21st is a holiday, to get
6 a transcript of today, maybe the 23rd. I am not going to be
7 available on the 24th and the 25th, and I'm not trying to push
8 this off, but we'll do our best to get it done by Wednesday
9 the 23rd.

10 THE COURT: Okay, I'm going to put that into an
11 order.

12 MR. CASCINO: Yes, we'll do our damndest, we'll do
13 our very best.

14 THE COURT: And then I would ask -- when Mr. Fonstad
15 receives that, if you think, Mr. Fonstad, you could give us a
16 response by the 30th, and that response may very well be you
17 found out that you don't have enough time, but make a real
18 effort to try to provide some kind of response, because it
19 sounds to me like Mr. Kenney has obviously done a lot of work
20 on this and looked at this, and is reasonably knowledgeable
21 about this, but there have been some issues that have come up
22 that maybe can be somewhat amplified.

23 MR. CASCINO: Your Honor, may I also be able to talk
24 with Mr. Kenney? Maybe he and I can sort through some of this
25 as well before I write whatever it is to the Court. At least

1 that we state out our position, if nothing else.

2 THE COURT: Yes, I would encourage that. And Mr.
3 Kenney, I hope you have no objection to that.

4 MR. KENNEY: No, I have no objection to that.

5 THE COURT: All right. Okay.

6 MR. KENNEY: If you want to talk after this call,
7 Mr. Cascino, you can call me at 312-853-2602.

8 MR. FONSTAD: Your Honor, this is John Fonstad. The
9 only question I have is, we have, under the current scheduling
10 order which still applies to this case, our summary judgment
11 motion is due on February 1st.

12 I'm assuming that Mr. Cascino, you know, depending
13 on whether or not, you know, how this actually shakes out in
14 terms of if we can find anything responsive to a more tailored
15 discovery request, might want to file an expert report
16 concerning GE engines, and we might need to depose that
17 expert.

18 THE COURT: Yes.

19 MR. FONSTAD: So I'm wondering, should we move that
20 summary judgment deadline?

21 THE COURT: Yes. What I will do is to enter an
22 order specifically with respect to Sypchalla that will suspend
23 for now the summary judgment deadline. And I'll have to take
24 a look at the order and see what it says about submission of
25 expert reports and that thing, but suspend those deadlines

1 subject to a further order, once this aspect of it gets worked
2 out. But I'm sure Mr. Cascino appreciates the need for that,
3 and that's what we'll do.

4 MR. CASCINO: That's fine, Your Honor.

5 And the other point is that we still don't have a
6 date, because we have to have the hearing of this motion, and
7 I think there's another UPC one or Boeing one or something out
8 there that still exists before our expert, and the Court on
9 November 5th said we didn't have to name an expert until we
10 got through all of this discovery.

11 THE COURT: Yes.

12 MR. CASCINO: So this thing is, this individual case
13 has fallen on its own track.

14 THE COURT: That's right, that's right.

15 MR. CASCINO: And as the Court indicated way back
16 when, it did see that this was a possibility that cases could
17 wind up on their own track. But as long as we did the
18 substantial amount of submissions, the Court was going to be
19 permissible in that regard, and that sounds like what's going
20 on. So we appreciate that.

21 THE COURT: That's right. That's exactly right.
22 Don't get the idea that I suggested that it was going to
23 happen with more than one case. We were talking about
24 Sypchalla at the time.

25 MR. CASCINO: No problem.

Colloquy

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1 THE COURT: All right, gentlemen. So, Mr. Fonstad,
2 you're good with that?

3 MR. FONSTAD: I'll trust your judgment, Your Honor.
4 Thank you.

5 THE COURT: You're very diplomatic today, Mr.
6 Fonstad.

7 MR. KENNEY: Yes, he only criticizes the judge once
8 per call.

9 THE COURT: Yes, that's good.

10 MR. FONSTAD: And very delicately at that.

11 THE COURT: Indeed, indeed. All right, gentlemen,
12 thank you very much.

13 ALL COUNSEL: Thank you, Your Honor.

14 (Proceeding concluded at 3:56 p.m.)

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C E R T I F I C A T I O N

We, Josette M. Jones and Sandra Carbonaro, court
approved transcribers, certify that the foregoing is a correct
transcript from the official electronic sound recording of the
proceedings in the above-entitled matter.

JOSETTE M. JONES

SANDRA CARBONARO

Diana Doman Transcribing

AGENCY

DATE